

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACOB SMITH,

Plaintiff,

v.

FIRSTENERGY CORP. AND
FIRSTENERGY SERVICE CO.,

Defendants.

BRIAN HUOCK AND CAMEO
COUNTERTOPS, INC.,

Plaintiffs,

v.

FIRSTENERGY CORP., *et al.*,

Defendants.

JAMES BULDAS,

Plaintiff,

v.

FIRSTENERGY CORP., *et al.*,

Defendants.

Case Nos. 2:20-cv-03755, 03954, 03987

Judge Edmund A. Sargus

Magistrate Judge Kimberly A. Jolson

**FIRSTENERGY DEFENDANTS' MOTION TO RECONSIDER
OR VACATE ORDER GRANTING MOTION TO CERTIFY CLASS**

For the reasons in the accompanying memorandum, Defendants FirstEnergy Corp., FirstEnergy Service Co., Steven E. Strah, and K. Jon Taylor respectfully move the Court to reconsider and withdraw or vacate its order (ECF 73) granting Plaintiffs' motion for class certification (ECF 62). While the Court described the latter motion as "unopposed," Defendants' deadline to respond to the

motion under the governing Scheduling Order has yet to pass and, accordingly, the motion was not ripe for decision. The FirstEnergy Defendants intend, and have the right, to respond to the class certification motion by the deadline outlined in the Scheduling Order, and to have the Court consider that response. *See* ECF 43, Scheduling Order ¶ 4(e). The FirstEnergy Defendants therefore file this motion to correct a clear error and prevent the manifest injustice that would result from granting Plaintiffs' unripe motion for class certification.

November 12, 2021

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER
OR VACATE ORDER GRANTING MOTION TO CERTIFY CLASS**

INTRODUCTION

The FirstEnergy Defendants respectfully ask the Court to withdraw or vacate its order granting Plaintiffs' motion for class certification (the "Certification Order") because the Court issued it before Defendants' response to the motion was due. Under the Scheduling Order, Defendants' response is due "30 days after ... the transcripts from all depositions of named Plaintiffs and Plaintiffs' experts are available." ECF 43 ("Scheduling Order") ¶ 4(e). Those depositions have not yet occurred; accordingly, Defendants' deadline to respond has not yet passed. The Court was therefore mistaken when it understood the class certification motion to be "unopposed." ECF 73 at 3. The motion is very much opposed, and the FirstEnergy Defendants have a right to submit their written opposition and accompanying materials by the deadline set forth in the Scheduling Order. Accordingly, the FirstEnergy Defendants ask the Court to withdraw or vacate the Certification Order to allow for responses to the certification motion in the time set by the Scheduling Order.

Plaintiffs have not disputed any of the procedural facts discussed herein, most importantly that the Scheduling Order governs Defendants' response deadline and that the depositions that trigger that deadline have not occurred.

BACKGROUND

This is a putative class action on behalf of all Ohio ratepayers seeking to recover for allegedly higher electric utility rates that Plaintiffs blame on Defendants' conduct in connection with Ohio's House Bill 6. The named Plaintiffs filed three separate complaints, which the Court consolidated. *See* ECF 16. On March 5, 2021, the Court entered the Scheduling Order to govern the proceedings. Scheduling Order at 2. Among other things, the Scheduling Order established the procedure and timing for discovery and briefing on class certification. *Id.* ¶ 4.

1. The Scheduling Order directed Plaintiffs to serve written class discovery by March 15, 2021, and for Defendants to respond within 30 days. *Id.* ¶ 4(a). Plaintiffs' deadline to move for certification